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CHARLES L. RYAN
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December 31, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
444 12th Street, SW,
Room TW-A325
Washing, DC 20554

Re: FCC Second Further Notice of Proposed Rulemaking; Inmate Calling Regulation-
WC Docket No. 12-375

Dear Ms. Dortch:

The Arizona Department of Corrections (ADC) submits the following comments to the Federal Communications Commission's (FCC) Second Further Notice of Proposed Rulemaking (SFNPR) related to regulation of Inmate Calling Service (ICS) (WC Docket NO. 12-375). ADC remains concerned, as we expressed in the docket previously, about the FCC's use of its regulatory powers to establish a national public policy, one-size-fits-all approach, to ICS without fully considering the impact on correctional operations. Further, it is ADC's position that Arizona policy makers and the ADC, and not the FCC, are in the best position to establish how proceeds from inmate phone calls are best allocated for the benefit of its users. The SFNPR presupposes all states are similarly situated and dismisses states such as Arizona that are statutorily required to earmark proceeds and commissions from ICS to pay for inmate education and programs. See A.R.S. § 41-1604.03. Although the FCC proposes that lower phone rates will facilitate more familial contact and reduce recidivism, Arizona policy makers have decided that allocating more funds to inmate education, community college partnerships, work programs, and substance abuse programs better serves the inmates and the community in which they re-integrate upon release. These are but a few examples of how ADC uses the proceeds from ICS to improve the lives of inmates and reduce recidivism. It is this very type of policy making that should be left to the states and the correctional authorities who are armed with the data relating to reduced recidivism and what works in a particular state. Finally, the FCC does not have the authority to usurp the State's regulatory authority over intrastate telecommunications. Arizona's Constitution vests authority to regulate intrastate telecommunications with the Arizona Corporation Commission (ACC).

The ADC defers to the comments submitted by the ACC regarding the FCC's authority to regulate intrastate phone rates, whether ICS or in the community. Beyond that issue, however, is the overriding concern that the FCC is abusing its regulatory authority by encroaching on the state's right to decide whether, and how, ICS users should pay for some of the benefits that are returned to the user. Federal Law requires state correctional facilities to provide inmates legal access to the courts regardless of ability to pay. ADC utilizes monies from ICS proceeds to fund

this mandate. The greatest use of ICS revenues are allocated to educational opportunities for inmates, including contracts with community colleges for work based education, intake test of adult basic education (TABE) and general education diploma (GED) testing. Other uses of these funds include law library supplies for inmates, inmate trust account (ITA) fees and supplies, and an annual transfer to be used for building renewal. The FCC minimizes the value and importance of those benefits by saying, "What appears to be of limited relative importance to the combined budgets of correctional facilities has potentially life-altering impacts on prisoners and their families." It is absurd and offensive for the FCC to supplant its policies for that of the Governor, Legislators, and Correctional Directors. The cumulative budgetary impact of the proposed rule limiting or prohibiting site commissions on ICS will be significant for ADC, and not readily absorbed by current allocated funds. Just as the FCC predicts lower inmate phone rates will have potentially life-altering benefits for inmates, the ADC predicts that reduced educational and job training opportunities will have potentially life-altering negative impacts on inmates and their families, not to mention public safety in the community.

The FCC seeks comment on a two-year transition away from site commissions to ease the pain resulting from this proposed rule. It also seeks comment on whether a prohibition on site commissions would foster a "more competitive marketplace." The two-year transition proposal would not avoid the "flash cuts" that are predictable as a result of the FCC's proposal to re-write current contracts. ADC recently completed a competitive process to procure inmate phone services. This procurement process provides for competition to secure not only a justifiable calling rate, but also key provisions such as commissions. ADC's new ICS contract addresses some meaningful reforms consistent with that proposed by the FCC in Paragraph 87 of the SFNPR. ADC eliminated "ancillary fees," while at the same time it kept per minute rates low and retained an allowance for commissions on intrastate calls to fund inmate education, as well as other programs benefiting inmates.

In the *Order*, the Commission did not directly override existing contracts between correctional facilities and ICS providers. Rather, the Commission noted that if "any particular agreement needs to be revisited or amended . . . such result would only occur because agreements cannot supersede the Commission's authority to ensure that the rates paid by individuals who are not parties to those agreements are fair, just, and reasonable." The Order further stated "the record indicates that the interim rates were implemented with little to no contract renegotiation." [Footnote references deleted] The SFNPR goes on to seek "comment on whether we should abrogate ICS contracts or modify particular terms of such contracts."

Here again the FCC demonstrates a tenacity to engage in regulating an area of the states' business by deciding what is "fair" and what is not in contracts between states and ICS providers. ADC spent months of procurement work in 2014 that may be affected by an FCC decision. Companies that attempted to participate in a legal, legitimate state procurement, including preparing for possible significant capital investment, could now be impacted by an FCC decision to regulate intrastate rates. We believe it is inappropriate and possibly financially impactful to the State for the FCC to now further their regulation into state business, specifically intrastate rates and commissions. The contract that Arizona recently completed, although

currently under protest, is for a five year period. In addition, the contract calls for a significant investment by the winning vendor to replace all the inmate telephones which are currently at the end of life. The current SFNPR causes a significant complication for ADC's winning vendor to operate under the current contract. If a provider loses a significant investment due to an FCC rulemaking, the provider could have a claim against the State to recoup money expended on capital improvements. For that reason, ADC proposes that any rulemaking exempt current contracts that were awarded prior to any FCC action, thereby allowing ADC and the winning vendor to fulfill their contractual obligations under the existing terms of the contract.

The FCC's proposal to do away with site commissions as a means to promote a more competitive marketplace is short-sighted and is another example of the FCC attempting to regulate a business with which it has no experience or expertise. The public at large may choose amongst any number of providers in a free marketplace. Inmates, however, are not free to choose their provider. In fact, inmate phone service is not an entitlement; it is a privilege that is appropriately managed by correctional authorities and not a regulatory agency.

Further, the FCC's comparison of ICS to payphones is curious. In particular, the FCC asks "whether market conditions for ICS differ sufficiently from those the Commission previously found in the case of public payphones as to warrant different treatment under sections 276. In paragraph 35 of the Proposed Rulemaking, the FCC asks "Are ICS providers inherently 'monopoly providers of payphone service,'" and therefore able "to charge supra-competitive prices." ADC believes ICS does not differ sufficiently, and is in fact similar to, public payphones in regard to using only one "monopoly" provider. Most assuredly corrections' facilities are set up as monopoly providers as it makes no sense to operate multiple ICS providers in a prison system. Therefore, ADC believes it is indeed the case that ICS warrants different treatment under section 276 and should not be treated like a residential type competitive market. For many reasons, such as security and monitoring, ICS rates should be expected to be higher.

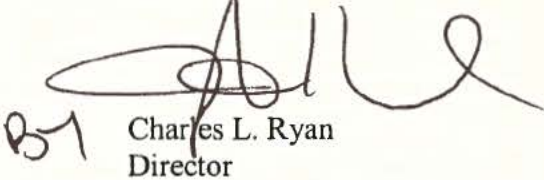
In paragraphs 69 and 71, the Order mentions Alabama PSC's rates and the notion of allowing commissions along with "tiered rates". Although ADC clearly objects to any ban on commissions, we do not object to allowing commissions along with tiered rates so long as the current rate cap is the floor and cannot be reduced. Thus, the minimum rates, even for large prisons should be the current caps in place on interstate rates.

While the ADC recognizes Grandma Wright's interest in maintaining contact with her inmate grandchild, the SFNPR is not the appropriate means by which to implement reform in inmate phone rates. Not all states have "exorbitantly" high rates as asserted in the SFNPR, and the FCC has merely proposed to implement a rule that applies nationwide without regard to state specific rate structures or statutory mandates with regard to how the proceeds from inmate phone calls are utilized. States like Arizona that are statutorily mandated to use revenue from inmate phone calls for the direct benefit of the inmate population and do not, in any way, use these funds for staff salaries, should be exempt from this broad brush approach. ADC recognizes, however,

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that holding rates at a certain level, such as the structure in Alabama, would be a reasonable means to achieve the FCC's goal of increasing familial contact with inmates while still allowing states like Arizona to enter into long-term ICS contracts that allow site commissions to be used by correctional facilities for the benefit of the end user.

Sincerely,

A handwritten signature in dark ink, appearing to read "CL Ryan", with a large, stylized flourish extending to the right. To the left of the signature is a small, handwritten mark that looks like "B1".

Charles L. Ryan
Director